

This record is a partial extract of the original cable. The full text of the original cable is not available.

C O N F I D E N T I A L SECTION 01 OF 03 BAGHDAD 003104

SIPDIS

E.O. 12958: DECL: 07/27/2025

TAGS: [PREL](#) [PGOV](#) [KDEM](#) [IZ](#)

SUBJECT: AN OVERVIEW OF IRAQ'S TROUBLING AND INSPIRING

DRAFT CONSTITUTION

Classified By: Political Counselor Robert Ford.

Reasons 1.4 (B) and (D)

[11.](#) (C) SUMMARY: The Constitution Committee convened as a single body on July 25 to begin debating a draft document that integrates the work done by six subcommittees. That draft document, a copy and detailed analysis of which we are disseminating septel, is more a Shia opening position than a consensus text but it has been accepted as an initial basis for negotiations. This cable outlines this Shia draft's key achievements, defects, and gaps as follows:

-- ACHIEVEMENTS: The draft offers a wide net of protections and rights and establishes a three-branch parliamentary government. The draft recognizes Iraq's minorities more explicitly than the TAL and provides strong safeguards against militarism.

-- DEFECTS: The draft allows Islamic law to circumscribe individual rights, treaty obligations, and potentially overshadow the constitution itself. TAL safeguards on women's rights and representation have been dropped or altered. The text alters the TAL procedure for judicial appointments and opens the door to the politicization of the judiciary. The text contains language on the Shia religion and de-Ba'athification that could provoke Sunni Arab delegates.

-- GAPS: The text does not make significant headway in resolving the debate over federalism,. The text reflects an ongoing debate over whether the Iraq's future political system will require broad consensus or allow for majority rule. Proposals on Kirkuk and dual citizenship do not appear to reflect full consensus. The text fails to adequately address the role, structure and authorities of Iraq's judiciary. END SUMMARY.

An Overview of a Very Rough Document

[12.](#) (C) The following cable offers a broad overview of the draft constitution now under debate in the Constitution Committee drafting committee. The draft document, attached at the end of this cable, was prepared by SCIRI leader and Constitution Committee Chairman Humam al-Hamudi and passed to Poloff in confidence. It is more a Shia opening position than a consensus text. Shia leaders appear to have withdrawn compromises they previously offered on religion and state so that they can offer them up again in the escalating negotiations ahead. Furthermore, the document is unmistakably a very rough draft. This cable aims only to cite its key achievements, defects, and gaps. A separate cable attempts a closer article-by-article analysis.

The Draft's Achievements

[13.](#) (C) The document takes important steps toward the following key achievements:

-- A NET OF PROTECTIONS FOR THE ACCUSED, CHILDREN, AND THE DISADVANTAGED: The text offers strong protections on search and seizure and a wide ban on torture and inhumane treatment. The text places tough limits on child labor, though it does not ban it entirely, and it contains a flat prohibition on any government efforts to revoke Iraqi citizenship. It also steps back from previous drafts that seemed to put a potentially overwhelming welfare burden on the state. (See Section 2).

-- AFFIRMING NATIONAL UNITY: The text goes further than the TAL to acknowledge and enshrine Iraq's mosaic, naming each Iraqi ethnic and religious minority by name. (See Section 1, Articles 3 and 5)

-- GUARDS AGAINST MILITARISM: The military is placed firmly under federal control and required to "emulate (Iraq's) sectarian, religious and national composition." The National Assembly must authorize the deployment of Iraqi forces abroad "for defensive purposes" by two-thirds vote.

(See Section 1, Article 14 and Section 3, Chapter 1)

-- THREE-BRANCH GOVERNMENT WITH POWERFUL PARLIAMENT: The parliament has confirmation authority over a broad range of senior government officials and, perhaps problematically, can even prevent the prime minister from firing members of his own cabinet. The National Assembly also appears to have veto authority over any loan or project concluded by the government, a provision that could reduce the government's flexibility to use even already-budgeted funds. The text eliminates the body of the "presidency council" and vests all of that institution's TAL-originated powers in the hands of a single president. (See Section 3, Chapters 1 and 2)

-- FINESSING KIRKUK: The draft text makes an artful effort to finesse the problem of Kirkuk, emphasizing the need for Article 58 to be implemented but not deviating from the outline offered in the TAL that puts off border adjustments and a referendum until after the constitution. (See Section 6, Article 4)

-- POSSIBLE COMPROMISE ON DUAL-CITIZENSHIP: The document appears to make an effort to achieve a compromise on the controversial issue of dual citizenship. In this text, the right to dual citizenship is granted but National Assembly membership and other senior positions in the government appear limited to those who are children of two Iraqi parents. (See Section 2, Article 4 and Section 3, Article 4)

The Draft's Defects

14. (C) Even as it stakes out progress in the above areas, this draft, in addition to being loosely written and self-contradictory, raises several areas of concern:

-- ISLAM OVERSHADOWS THE CONSTITUTION, INTERNATIONAL LAW: Islam is described as "the principal source of law" and Iraq's treaty obligations and guarantees on women's rights are all bounded by the condition that these treaties and rights "do not violate the rulings of Islam." The text alters the appointment procedure for the Federal Constitutional Court in a manner that would appear to allow the Council of Ministers greater latitude to politicize or even Islamize the body. The document contains an article that enshrines the "independence" of the "marja'iyah," or religious authority, which puts a distinctly Shia cast on what is supposed to be a non-sectarian document. (See Sections 1 and 2)

-- SAFEGUARDS AGAINST THEOCRACY DROPPED: A final draft from sub-committee number two, obtained July 23 by Poloff, would have declared religious commitments essentially voluntary and allowed citizens to choose the personal status law they want applied to them, be it Sunni, Shia, Christian or even civil law. The new draft omits that article. This text drops this language, although the Iraqi Penal Code currently does proscribe any punishments not provided for by law.

-- SAFEGUARDS, GUARANTEES ON WOMEN'S RIGHTS, REPRESENTATION DROPPED OR ALTERED: The text makes its guarantees on women's rights subject to "rulings of the Islamic Sharia." The text drops the TAL provision that guaranteed women a quarter of the seats in the National Assembly, although several female members of the committee have insisted that they are confident this guarantee will be reinstated without bruising debate. (See Section 2, Article 6)

-- PROVOCATIVE MEASURES FOR SUNNI ARABS: The mandate of the De-Ba'athification Commission, which many Sunnis hoped would end with the writing of a new constitution, is strongly reaffirmed. The constitution also guarantees the rights of Iraq's "Persian" community by name (albeit in bracketed language), a tolerant if obscure gesture that Sunni Arabs are likely to consider a nod to a "fifth column" in their midst. (See Section 1, Article 3, and Section 6, Article 3.)

The Draft's Gaps

15. (C) The draft fails to resolve, treats ambiguously, or omits several key issues:

-- NO RESOLUTION ON FEDERALISM, ONLY OPTIONS: The text removes the TAL's limitations on federalism, allowing an unlimited number of regions to unite without any approval from the central government. The text makes a stab, in extremely loose language, at laying out the authorities of the regional entities. It calls for a multiplicity of constitutions, one for each region, and it allows each regional president to represent his area abroad and enter

into certain limited treaties with foreign countries. It also implies that the regions would have responsibility for internal security, which presumably means full control over the police forces, an area currently limited by the authority of the Interior Ministry. Even as it lays out these provisions, the text records objections from other members. A series of alternative provisions on revenue sharing present more a menu of options than an actual proposal, ranging from centralization to extreme decentralization of resource ownership and management. (See Section 4)

-- A PIVOTAL DEBATE OVER ELECTING THE PRESIDENT: The draft text shows an ongoing debate over whether the assembly would elect the president and vice president by absolute majority or two-thirds majority. The TAL calls for this to be a two-thirds vote, and that steep requirement forced the Shia list and Kurdish alliance to ally after the January 2005 elections and produce a coalition government. (See Section 3, Chapter 2, Article 2)

-- NO SUPREMACY CLAUSE: Unlike the TAL (see TAL Article 3A), the draft text contains no "supremacy clause" making clear that the constitution is the highest law in Iraq. The draft proposes the establishment of a Supreme Constitutional Court and a Supreme Federal Court but does not adequately lay out the differences in the two courts jurisdictions. (See Section 3, Chapter 3)

17. (U) REO HILLA, REO BASRA, REO MOSUL, and REO KIRKUK, minimize considered.

Khalilzad